

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:)	Bankruptcy No. 08-18700
)	
)	
JOHN T. KEMP,)	
)	
Debtor.)	
-----)	
JOHN T. KEMP,)	Adversary No. 08-02448
)	
Plaintiff,)	
)	
vs.)	
)	
COUNTRYWIDE HOME LOANS, INC.,)	Camden, New Jersey
)	August 11, 2009
Defendant.)	10:24 a.m.
-----)	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JUDITH H. WIZMUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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produced by transcription service.

1 LINDA DeMARTINI, DEFENSE WITNESS, SWORN

2 THE COURT: Please have a seat. Your full name,
3 first and last, and spell your last name, please.

4 THE WITNESS: My name is Linda DeMartini. The last
5 name is spelled D-E capital M-A-R-T-I-N-I.

6 DIRECT EXAMINATION

7 BY MR. KAPLAN:

8 Q Okay, Ms. DeMartini, would you -- who are you employed by?

9 A I am employed by Bank of America Home Loans, formally
10 known as Countrywide Home Loans.

11 Q Okay. And how long have you been employed there?

12 A A total of almost ten years.

13 Q And what is your position there?

14 A I am an operational team leader for the Litigation
15 Management Department currently. I've been there just about a
16 year.

17 Q Are you familiar with the documents relating to Mr. Kemp's
18 mortgage loan?

19 A Yes, I am.

20 Q Okay. Now who, based upon your knowledge of the loan
21 documents, who's presently the owner, holder, transferee of
22 the note?

23 A Well, the owner as in the investor, that would be Bank of
24 New York, and we -- we are the servicer, Bank of America Home
25 Loan, Servicing, LP, formally known as Countrywide Home Loan

DeMartini - Cross

4

1 Servicing, LP.

2 Q Okay.

3 MR. KAPLAN: I'd like this marked as I guess D-1.

4 Okay, may I approach the witness, Your Honor?

5 THE COURT: Yes.

6 BY MR. KAPLAN:

7 Q Could you tell the Court what that document is?

8 A That's the allonge to the promissory note.

9 Q And is that the original?

10 A Yes, this is.

11 Q And it references -- what -- could you -- and who signed
12 that document?

13 A Sharon Mason.

14 Q And what's Ms. Mason's position with Country --

15 A She is Vice President. She's actually part of our
16 Bankruptcy Risk Litigation Management Department. She's
17 actually my boss's boss.

18 Q Okay. And you're familiar with Ms. Mason's signature?

19 A Yes, I know it very well.

20 Q And that's Ms. Mason's signature?

21 A Definitely.

22 Q And the allonge is -- the purpose of the allonge?

23 A It shows the transfer to Bank of New York as the trustee.

24 Q Okay. So it -- it's your testimony that Bank of New York
25 is trustee as the holder or the investor of that loan?

DeMartini - Cross

5

1 A Yes, that's correct.

2 MR. KAPLAN: Your Honor, essentially she has
3 testified to the document. I really don't have any other
4 questions that --

5 THE COURT: Well, let's cross.

6 CROSS-EXAMINATION

7 BY MR. LEVITT:

8 Q Ms. DeMartini, you said you're familiar with the loan
9 documents?

10 A Hm-hmm.

11 Q What do they consist of?

12 A Well, we've got the notice there, the mortgage is there.
13 In our system we have any of the documents -- settlement
14 statement, title policy, every single document that would have
15 been signed at the time that the loan was taken out.

16 Q When was the first time that you saw those documents?

17 A A few weeks ago.

18 Q Were you at all involved in the preparation of the proof
19 of claim?

20 A No, I was not involved in the proof of claim. That would
21 have been before it got to the Litigation Department.

22 Q When was the first time that you saw the allonge to the
23 promissory note?

24 A Approximately two weeks ago.

25 Q And how was it that you came to see the allonge to the

DeMartini - Cross

6

1 promissory note?

2 A Well, in my role as a supervisor in the department I have
3 litigation specialists who work for me. When cases are coming
4 up, I review their cases as a regular matter of course so I'd
5 be reviewing the documents with that. When this date came up
6 as far as having this hearing today and it became known to me
7 that I was most likely going to be the one traveling here to
8 be a part of it, I made sure that I got involved in every
9 aspect of the case.

10 Q When was this allonge prepared?

11 A This allonge would have been prepared by my specialists.
12 I don't have the exact date committed to memory, but this
13 would have been done within the last couple of months most
14 likely.

15 Q So one of your employee's prepared the allonge?

16 A One of my employee's would have taken -- would have gotten
17 the allonge and we would have been the ones that obtained the
18 signature from Sharon, yes.

19 Q So it was just recently signed?

20 A Fairly recently signed, yes.

21 Q Signed essentially in contemplation or in the course of
22 this litigation, correct?

23 A Most likely.

24 Q And it was prepared in your office?

25 A It would have been -- whether it was originally prepared

DeMartini - Cross

7

1 in my office or not I can't answer to that. I can tell you it
2 was signed in our office because Sharon's the one that signed
3 it --

4 Q So the original --

5 A -- and I've been to her office.

6 Q -- the original was located in your office?

7 A Yes.

8 Q Where's your office located?

9 A Simi Valley, California.

10 Q And has the original of this allonge remained in your
11 office until you appeared here today?

12 A We had sent it on to -- to our attorneys. They were in
13 possession of it.

14 Q And again, who do you believe is the holder of the note
15 and mortgage here?

16 A Well, Countrywide -- Bank of America -- whatever we're
17 calling ourselves these days, we are Bank of America now -- we
18 originated this loan. It was originated via a broker and it's
19 really always been a Countrywide loan. The investor is Bank
20 of New York. We are the servicer of the loan.

21 Q Now, when you say it's really a Countrywide loan, wasn't
22 it sold? Wasn't this loan securitized and ultimately sold --
23 sold to this trust?

24 A Right, it would have been securitized and sold. They are
25 the investors of the loan. But we are the ones that would

DeMartini - Cross

8

1 have originated it, we are the ones that have always serviced
2 it.

3 Q Today who is the owner of the loan?

4 A Bank of New York.

5 Q Bank of New York?

6 A As -- as the trustee for the certificate holder CWABS,
7 Asset-Backed Securities series number --

8 Q And who is in possession of the note?

9 A Who is in possession of the note? We have the note in our
10 origination file.

11 Q So -- so Bank of New York as trustee does not hold the
12 note, is that correct, or is not in possession of the note?

13 A The original note to my knowledge is in the origination
14 file.

15 Q Where is the -- do you have it here today?

16 A No, I don't have it with me here today.

17 Q So you don't have the note?

18 A It's in our office.

19 Q So it's in your office, it's not with this trust that owns
20 the -- that's supposedly holds the -- or is the owner of this
21 note, is that correct?

22 A That's correct.

23 Q And your testimony is that this allonge was never
24 submitted to -- it was never in the possession of Bank of New
25 York as trustee for the certificate holder, is that correct?

DeMartini - Cross

9

1 MR. KAPLAN: Your Honor, I object. Countrywide or
2 Bank of America is the servicer. They possess and hold all
3 the documents.

4 THE COURT: Don't give me an argument, that's not an
5 objection to the question. I don't mean to be -- to cut your
6 off, but you're welcome to make that argument bottom line, but
7 that's a perfectly proper question.

8 BY MR. LEVITT:

9 Q And this allonge, it's a stand-alone document, correct?
10 It's not attached to anything, is that correct?

11 A I'm not sure I'm understanding your question.

12 Q Was there anything -- when you brought the original that's
13 in front of you, did you remove it? Was it stapled to
14 something else?

15 A No, it wouldn't have necessarily been stapled to something
16 else. There would have probably been other documents showing
17 the -- you know, we would have shown her the note. We would
18 have reviewed all of that before.

19 Q And where are all the documents that you showed her?

20 A Well, I have copies of -- I have a copy of the note, I
21 have a copy of the deed with me here today.

22 Q And those --

23 A They're signed copies.

24 Q Can you show me exactly the documents that you showed her
25 when you had her sign this allonge?

DeMartini - Cross

10

1 A They're probably right -- well, they would be in that
2 clump there. That's mostly the Pooling and Servicing
3 Agreement, the larger one.

4 Q This one?

5 A Yeah. There's the note in there, there's the deed and the
6 mortgage and you sign it.

7 Q You just --

8 MR. KAPLAN: May I provide this --

9 MR. LEVITT: -- I'm sorry.

10 MR. KAPLAN: -- provide this note?

11 MR. LEVITT: Yeah, go ahead.

12 THE WITNESS: Because this was provided to me by my
13 specialist to -- to bring along so that I have the documents
14 here for you today.

15 BY MR. LEVITT:

16 Q Let me ask you this. Did you show those documents to --
17 is it Sharon Mason?

18 A Did I personally show the documents? Whoever brought her
19 -- and to be honest with you, I don't know if it was me or my
20 specialist, Dee, who brought them to her -- whoever brought
21 them to her would have had them with them, yes, whichever of
22 the two of us.

23 Q Who brought them to her?

24 A Generally speaking, it would have been me, but I don't
25 recall bringing this particular one to her so I believe it was

DeMartini - Cross

11

1 Dee.

2 Q So you don't recall bringing it, you don't recall -- and
3 you don't know what documents were shown to her, is that
4 correct?

5 A No, I know what documents were shown to her because
6 they're right here and they -- and they're all together.

7 Q Did you bring those documents to Sharon Mason? Did you
8 personally?

9 A Not to my knowledge, no.

10 Q Do you know specifically who brought those documents to
11 Ms. Mason?

12 A My specialist, Dee.

13 Q And you saw her bring the documents to Ms. Mason?

14 A Did I physically stand over her --

15 Q Yes.

16 A -- and witness it? No.

17 Q Okay. Is the original note in that stack of documents?

18 A An imaged copy of the signed note is in here.

19 Q Is --

20 A The absolute original, no, it is not.

21 Q And again, my question before was was this attached to the
22 note? This allonge, was it attached physically, with a
23 staple, with a piece of glue -- was it attached?

24 A With a staple? No, because then it would have a hole in
25 it. But it would have been brought along with it. We would

DeMartini - Cross

12

1 have shown it to her.

2 Q But again, now again getting back to my other question, so
3 this is a stand-alone document, it wasn't attached to
4 anything?

5 A Okay, then yes.

6 Q Okay. And can you take a look at the -- what you believe
7 to be the good copy of the note that you have?

8 A Okay.

9 Q Do you mind separating it from the rest of the papers?

10 A Sure, I'll take it apart.

11 (Pause in proceedings)

12 A Okay, and your question?

13 MR. LEVITT: Your Honor, may I approach the witness?

14 THE COURT: Sure.

15 BY MR. LEVITT:

16 Q Not the mortgage, the note --

17 A Yeah, I've got all kinds of stuff.

18 MR. LEVITT: Your Honor, if you could excuse us one
19 second. There seems to be a discrepancy between what the
20 witness has and what my office was provided.

21 THE COURT: Certainly.

22 MR. KAPLAN: Judge --

23 THE COURT: And while you look at that, let me see
24 what's going on with the other case. You're welcome to take a
25 few minutes.

DeMartini - Redirect

13

1 (The Court hears another matter)

2 MR. LEVITT: Your Honor, with counsel's permission,
3 since we have stipulated, I'd like to provide a copy to Your
4 Honor.

5 THE COURT: All right. Is this a copy that we can
6 mark?

7 MR. LEVITT: It's an exact copy and we can mark that
8 as joint Exhibit 1, I believe.

9 THE COURT: J-1, interest only adjustable rate note.

10 BY MR. LEVITT:

11 Q Now, that document is the note that was contained in your
12 file?

13 A Yes.

14 Q And there's no endorsement on the last page of that note,
15 is there?

16 A No --

17 Q There's --

18 A -- there's no signature.

19 Q Is there room on the bottom if somebody wanted to put Pay
20 To The Order Of? Would there be room on the bottom?

21 A Well, I'm sure you could find a way to fit it in.

22 Q Okay.

23 MR. LEVITT: I have no further questions of this
24 witness, Your Honor.

25 THE COURT: All right.

DeMartini - Redirect

14

1 MR. KAPLAN: Cross-examine, Your Honor?

2 THE COURT: Please, please.

3 REDIRECT EXAMINATION

4 BY MR. KAPLAN:

5 Q Ms. DeMartini, is it generally the custom to -- for your
6 investor to hold the documents?

7 A No. They would stay with us as the servicer.

8 Q And are documents ever transferred to the investor?

9 A If we service-release them they would be transferred to
10 whomever we're service-releasing them to.

11 Q So I believe you testified Countrywide was the originator
12 of this loan?

13 A Yes.

14 Q So Countrywide had possession of the documents from the
15 outset?

16 A Yes.

17 Q And subsequently did Countrywide transfer these documents
18 by assignment or an allonge?

19 A Yes.

20 Q And --

21 A Well, transferred the rights, yes, transferred the
22 ownership, not the physical documents.

23 Q So the physical documents were retained within the
24 corporate entity Countrywide or Bank of America?

25 A Correct.

DeMartini - Recross

15

1 Q Okay. And would you say that this is standard operating
2 procedure in the mortgage banking business?

3 A Yes. It would be normal -- the normal course of business
4 as the reason that we are the servicer, as we're the ones that
5 are doing all the servicing, and that would include retaining
6 the documents.

7 Q Now, you were asked about whether or not the note could be
8 -- was endorsed at the bottom. Is it generally the practice
9 to endorse the actual note or to use an allonge?

10 A It's -- I've never seen an actual note that has an
11 endorsement on the bottom.

12 Q So would you say it's normal --

13 A It's generally more --

14 Q -- to have an allonge?

15 A Yeah, it would be more normal to have an allonge.

16 Q Okay. And once the allonge was signed, what would
17 generally happen to the allonge?

18 A Well, it would also be imaged and it would be recorded and
19 it would be put in our system and it would be kept as a normal
20 course. In a situation like this, we forwarded it onto the
21 attorneys because of the case but --

22 Q Okay. And if it had not been forwarded to the attorneys,
23 what would have happened to the allonge?

24 A It would have ended up in the file with everything else.

25 Q And the note attached to it?

DeMartini - Redirect

16

1 A Yes.

2 Q Thank you.

3 MR. KAPLAN: I have no further questions, Your
4 Honor.

5 MR. LEVITT: Just briefly, Your Honor.

6 RE CROSS-EXAMINATION

7 BY MR. LEVITT:

8 Q Ms. DeMartini, you testified that this allonge was just
9 prepared a couple of weeks ago, correct?

10 A Yeah, a short time ago, yes.

11 Q And wasn't it prepared because counsel called up and said
12 we need an allonge?

13 A Yes.

14 Q So it wasn't your normal course to have an allonge in this
15 situation, correct?

16 A Well --

17 Q When was this loan made?

18 A This loan was taken out I believe in 2006 -- yes.

19 Q So between 2006 and 2009 when you got a phone call from
20 counsel that said we've got a problem, prepare an allonge,
21 there was no allonge, correct?

22 A There wasn't an allonge prior to that, no. This loan,
23 like I said, it was always -- this was a loan that we
24 originated that has always been within the company that yes,
25 it was sold to -- as Bank of New York as the trustee and

DeMartini - Redirect

17

1 securitized, but there wasn't a need for an allonge prior to
2 this case.

3 Q Because there was no litigation pending, correct?

4 A Well, because there was no litigation --

5 Q Thank you.

6 A -- and because there was nothing to -- to get in the way
7 of the fact of the normal course of -- of the way that this
8 loan's being executed and being --

9 Q That's fine.

10 A -- being serviced.

11 Q Thank you.

12 MR. LEVITT: That's it, Your Honor.

13 MR. KAPLAN: One more question, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. KAPLAN:

16 Q Was it the intention of Countrywide to assign both its
17 rights in the mortgage and the note to Bank of -- to Bank of
18 New York as trustee?

19 A Yes.

20 THE COURT: Say that again?

21 BY MR. KAPLAN:

22 Q Was it the intention of Countrywide to assign its rights
23 in both the note and the mortgage to Bank of New York?

24 MR. LEVITT: I'm going to object to the question,
25 Your Honor. I'm not sure this witness is competent to answer

DeMartini - By the Court

18

1 that question based upon the foundation laid.

2 THE COURT: I agree.

3 MR. KAPLAN: Well, Your Honor, they -- to the extent
4 that there wasn't a physical document at some -- at the time,
5 they remediated that by signing the allonge and facilitating
6 their intentions.

7 THE COURT: Well, that's certainly a valid argument,
8 but it's not -- it still doesn't answer the question of
9 whether Ms. DeMartini can speak for Countrywide in terms of
10 their intent in doing anything.

11 MR. KAPLAN: Well, it's evidence that it was their
12 intent to assign the mortgage.

13 THE COURT: It very well may be, and we'll leave it
14 at that.

15 MR. KAPLAN: Okay.

16 THE COURT: Objection sustained. Let me ask you a
17 couple of questions.

18 EXAMINATION

19 BY THE COURT:

20 Q There was an unexecuted allonge to America's Wholesale
21 Lender that was filed with the proof of claim. Is that in
22 your file as well, that --

23 A Yeah. I have the -- the unsigned copy in there.

24 Q And it is unsigned?

25 A The old one? Yeah, that's the -- the copy I have, it

DeMartini - By the Court

19

1 looks like it's unsigned, yeah.

2 Q So is it the normal practice of Countrywide not to sign
3 allonges in the normal course?

4 A I can't answer to why that one was unsigned and that was
5 in there. When a loan goes into bankruptcy, our Bankruptcy
6 Department is the one that would be the ones actually
7 preparing and filing the proof of claim. Our group gets
8 involved when things turn to litigated matters --

9 Q But I'm not --

10 A -- and so that's why I can't speak to what they do in
11 their -- in their normal course of action. I haven't seen an
12 unsigned one before.

13 Q Well, I'm not talking about the process of filing a proof
14 of claim. I'm talking about the customary business practice
15 of Countrywide when a loan is transferred, when ownership is
16 transferred, when in this case the mortgage assignment
17 occurred on March 24th, 2008, correct?

18 A Yes.

19 Q And would that have been the date that the ownership of
20 the note and mortgage were sought to be transferred to Bank of
21 New York as trustee?

22 A That would have been the day they got the ownership, yes.

23 Q So the question is whether you know whether it's normal
24 practice for Countrywide to execute an allonge at the time
25 that that transfer takes place.

DeMartini - By the Court

20

1 A I don't believe that they're always executed exactly when
2 the transfer takes place. I believe that it often times
3 happens that it happens after the fact.

4 Q And does it always happen?

5 A I can speak that it always happens, no.

6 Q So there's no routine that requires internally, to your
7 knowledge, that the allonge be executed in connection with the
8 transfer of ownership?

9 A No, I don't think that there is a norm in that respect
10 because in a normal course of action and for -- and normal is
11 kind of a hard word anyway -- but --

12 Q A normal business practice, an ordinary --

13 A -- but as a normal business practice with a normal loan,
14 often times there really isn't a need for it unless the loan
15 is going to continually to be sold, and since this loan was --
16 yes, it was transferred to Bank of New York as trustee as it
17 was securitized, but it wasn't that another mortgage company
18 had the loan and then we bought it from them. Like I
19 mentioned, this was always done by Countrywide and we
20 securitized it and we -- you know, we sold it to them --

21 Q This was done --

22 A -- and so --

23 Q -- I'm not asking whether it was necessary, I am asking
24 whether there was an ordinary business practice to sign an
25 allonge and the answer is no, there was not?

DeMartini - By the Court

21

1 A I don't believe so.

2 Q Countrywide, the same entity as the originator of the
3 loan, serviced the loan from the outset or was it a different
4 aspect of the company?

5 A No. It would have always been the same. Even though Bank
6 of America has taken over Countrywide so to speak and we are
7 now wholly owned by Bank of America, all of the Countrywide
8 loans are still being serviced and the Bank of America --
9 prior Bank of America loans, they're all still being serviced
10 and done separately. This has always been by Countrywide.

11 Q Okay. Putting aside the takeover by Bank of America, this
12 loan was given on May 31st, 2006, correct?

13 A Yes.

14 Q And when the loan was given, after the loan was given,
15 Countrywide Home Loans, Inc. retained the servicing on the --

16 A Yes, that's correct.

17 Q And as of March 24th, 2008, that continued to be the case,
18 is that right?

19 A That's correct.

20 Q And there was a Pooling and Servicing Agreement between
21 Countrywide and --

22 A Bank of New York.

23 Q -- Bank of New York --

24 A Yes.

25 Q -- regarding the continued servicing of the loan, is that

1 right?

2 A That's correct.

3 Q And to your knowledge -- I think you might have the
4 servicing arrangement --

5 A Yes, I brought a copy of it.

6 Q -- with you, to your knowledge, is there any provision
7 that in the servicing of this loan that Countrywide acts as
8 the agent for Bank of New York in terms of possession of
9 original documents including the note in connection with this
10 transaction?

11 A I have the Pooling and Servicing Agreement there. It's
12 over 200 pages long. I'll be very honest; I did not read the
13 entire Pooling and Servicing Agreement. I do know that it is
14 our normal course of action with the loans that we service
15 that we are the ones that retain the -- that we retain those
16 documents.

17 Q Could such a clause be included in that, and if there were
18 such a clause, would that -- what would be the effect of that?
19 Should I look for that clause? Should I ask you to look for
20 that clause, or is it a fruitless enterprise?

21 MR. LEVITT: Your Honor, I think -- and I have it
22 also and it is a very thick document, Your Honor -- there are
23 other provisions in this document that I think would be --
24 even if there was something in there that says they could
25 retain documents, there's other provisions in this document

Levitt - Argument

23

1 which would be contradictory because there's provisions in the
2 Pooling and Servicing Agreement that say that documents have
3 to be delivered to an intermediary between Bank of America and
4 Bank of New York, the --

5 THE COURT: Well, shouldn't I consider all of that?
6 In other words, your -- one of your key points is the note was
7 not properly transferred because possession of the original
8 note was not given to the new owner, is that right?

9 MR. LEVITT: Partially, Your Honor.

10 THE COURT: Okay.

11 MR. LEVITT: But again, I'm not --

12 THE COURT: What's the --

13 MR. LEVITT: -- but I'm not raising --

14 THE COURT: What part of it is --

15 MR. LEVITT: -- but I'm not -- I'm not defending
16 this. The proofs that have been submitted to the Court are
17 that there's a piece of paper that they're calling an allonge
18 that was prepared in the course of this litigation that
19 they're relying on as an endorsement.

20 THE COURT: You're right.

21 MR. LEVITT: I haven't --

22 THE COURT: You're right, but --

23 MR. LEVITT: But I haven't heard --

24 THE COURT: -- I'm asking the question, and maybe it
25 should have been asked otherwise, but if there is such a

Levitt - Argument

24

1 provision in the servicing agreement about the retention of
2 possession as agent for the owner --

3 MR. LEVITT: And if -- if --

4 THE COURT: -- what part of your argument is it? In
5 other words, you say possession of the document is part of the
6 argument. What else is a part of the argument?

7 MR. LEVITT: No, but possession -- you have to have
8 possession of the document but in addition to possession, you
9 either have to have an endorsement, or you have to have proof
10 that these documents were actually transferred to the ultimate
11 owner, even if the agent for the owner is holding them. But
12 there still has to be proof that it was delivered from A to B
13 to C but none of those proofs have been submitted and it's not
14 my burden, Your Honor.

15 If counsel wants to say all right, forget the holder
16 argument, I lost on holder but here's my case that this note
17 was transferred from A to B to C, here's the delivery receipts
18 and yeah, it may be sitting in somebody's vault in California
19 and not with this trust, fine. But I haven't heard those
20 proofs and I don't think the Pooling and Servicing Agreement
21 gives us that, Your Honor. We need to see the delivery
22 receipts, we need to show the chain and there's nothing before
23 the Court.

24 THE COURT: Understood. Mr. Kaplan, is there
25 anything in those documents in the Pooling and Servicing

Levitt - Argument

25

1 contract that would --

2 MR. KAPLAN: That's a good question, Your Honor,
3 but, you know --

4 THE COURT: Don't you think you --

5 MR. KAPLAN: -- and I believe the witness's
6 experience is that documents are not physically transferred
7 from party to party to party.

8 THE COURT: But it's not experience that we're
9 talking about, it's UCC requirements.

10 MR. KAPLAN: I understand.

11 THE COURT: Is Mr. Levitt right when he says that
12 some kind of delivery of possession is required in order to
13 qualify as a transferee, not a holder? I think we've pretty
14 well established that the affixing that is required for holder
15 in due course status as not apparent in this case, has not
16 been established, but if you establish under UCC requirements
17 that there is a proper transfer, there may still be
18 opportunity to enforce the obligation.

19 MR. KAPLAN: Right. Your Honor, I understand but, I
20 mean, there's no way I'm going to argue that there was a
21 physical transfer. Countrywide was the servicer, the
22 originator. They had the documents --

23 THE COURT: Right, there was no --

24 MR. KAPLAN: -- they physically signed the necessary
25 documents required to document their ownership interests being

Kaplan - Argument

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1 transferred to the trust --

2 THE COURT: That's the issue. In other words,
3 I'm --

4 MR. KAPLAN: -- but they didn't physically deliver
5 it.

6 THE COURT: -- I'm raising the possibility that the
7 Pooling and Servicing Agreement might contain provisions that
8 would serve to offer Countrywide an out, meaning I'm not --
9 you know, here to advocate Countrywide's cause, but I am here
10 to get to the -- as close as I can to what should happen here.

11 MR. LEVITT: Your Honor, I'll answer the question
12 because I did see in the index -- and if Your Honor would like
13 I can hand up the Pooling and Servicing Agreement. This is
14 the Pooling and Servicing Agreement that was provided by the
15 defendant and I'll call your attention to Section 8-13.

16 THE COURT: Thank you.

17 MR. KAPLAN: What page is he on?

18 MR. LEVITT: It's 150.

19 THE COURT: 8.13, "Access to records of the trustee.
20 The trustee shall afford the sellers, the depositor, the
21 master servicer, the NIM Insurer and each certificate owner
22 upon reasonable notice during normal business hours access to
23 all records maintained by the trustee" --

24 MR. LEVITT: That tells me the trustee has the
25 records, Your Honor. That's as close as I can get. But I'll

Kaplan - Argument

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1 let you finish.

2 THE COURT: Well, yes, that doesn't seem to get at
3 it. If there is no authority in this document for Countrywide
4 to act as the agent for the trustee in maintaining the
5 original documents, then we face squarely the question of
6 whether lack of possession by the owner, the retention of
7 possession by the servicer, violates the transferee status of
8 the owner, or whether the servicer who filed the proof of
9 claim can stand by that status to succeed against this
10 challenge.

11 MR. KAPLAN: Well, Your Honor, the servicer has
12 authority to act in servicing the loan, including filing a
13 proof of claim under the Pooling and Servicing Agreement. In
14 addition, I believe there's a power of attorney that Bank of
15 New York has provided to Countrywide to act on their behalf to
16 administer --

17 THE COURT: Well, where is that?

18 MR. KAPLAN: I'd be happy to provide that to Your
19 Honor. Okay, we can mark that as Defendant's Exhibit 2.

20 THE COURT: Did we mark this copy of the servicing
21 agreement as Defendant's Exhibit 3?

22 MR. KAPLAN: That's fine, Your Honor.

23 THE COURT: And did we allow you a chance to look at
24 this document to ascertain what in it might be helpful to
25 you --

Kaplan - Argument

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1 MR. KAPLAN: Your Honor, there's --

2 THE COURT: -- rather than just leaving it to me to
3 peruse?

4 MR. KAPLAN: Well, that's fine, Your Honor, we'll be
5 happy to go through and submit to Your Honor references to the
6 various provisions in the document.

7 THE COURT: Okay, let's take a look, D-2, power of
8 attorney signed by the trustee. "Under the Pooling and
9 Servicing Agreements" -- "constituting and appointing
10 Countrywide Home Loan Servicing, LP full power of substitution
11 and re-substitution for the limited purpose of executing and
12 recording any and all documents necessary to effect a
13 foreclosure of a mortgage loan, the disposition of an REO
14 property, an assumption agreement or modification agreement to
15 supplement -- or supplement to the mortgage note, mortgage or
16 deed of trust and a reconveyance, deed of reconveyance or
17 release or satisfaction of mortgage or such instrument
18 releasing the lien of a mortgage in connection with the
19 transactions contemplated in those certain Pooling and
20 Servicing Agreements, by and among the undersigned," et
21 cetera.

22 "The undersigned also grants" -- "full power and
23 authority to do and perform each and every act and thing
24 requisite and necessary to be done in and about the premises
25 as fully to all intents and purposes as might or could be done

Kaplan - Argument

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1 in person to effect items one, two and three above, hereby
2 ratifying and confirming all that said attorneys in fact and
3 agents or any of them or their substitutes may lawfully do or
4 cause to be done by virtue hereof."

5 Well, there's a question mark -- does this power of
6 attorney authorize the agent/servicer to hold the original
7 documents in substitution for and satisfaction of the
8 requirements of the UCC. I mean, that's a question mark.

9 MR. KAPLAN: I understand. I understand, Your
10 Honor. But, I mean, Your Honor's probably familiar, mortgage
11 lenders and servicers don't normally transfer documents back
12 and forth in order to effectuate physical transfer. They
13 utilize agents or servicers to execute documents and retain
14 the documents and they don't send them across the country by
15 messengers or Federal Express to go to different vaults to be
16 maintained because --

17 THE COURT: And that's fine. That's --

18 MR. KAPLAN: And that's standard --

19 THE COURT: I mean, I'm not accepting your testimony
20 as an expert --

21 MR. KAPLAN: Yeah, I know, I know.

22 THE COURT: -- to that effect --

23 MR. KAPLAN: But I think it's reasonable --

24 THE COURT: -- but I'm accepting it and it may very
25 well be reasonable. Is it permissible under the Code.

Kaplan - Argument

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1 MR. KAPLAN: I understand, okay.

2 THE COURT: That's all I'm asking.

3 MR. KAPLAN: All I'm saying is I believe that it's a
4 standard business practice amongst the mortgage banking
5 industry and servicing industry not to physically move
6 documents from party to party unless there is a change of
7 servicing, in which case the physical files then must be sent
8 to the new servicer, not necessarily the new investor, holder
9 or -- you know, recorded owner of an assignment of mortgage,
10 et cetera, but the new servicer.

11 THE COURT: Well, it certainly makes sense and
12 presumably the Pooling and Servicing Agreement will clarify
13 that there is agency status for that purpose and we would try
14 to understand whether that would be sufficient for UCC
15 purposes. What else should I be looking at, counsel? We're
16 talking first about possession. What else are we talking
17 about? All right, let me ask one question before I forget. I
18 take it that the allonge that we've looked at, the new
19 allonge, has not been recorded?

20 MR. KAPLAN: Well, normally you would not record a
21 note, Your Honor. The note passes from party to party. It's
22 like a check --

23 THE COURT: Right.

24 MR. KAPLAN: -- it doesn't get recorded in the
25 County Clerk's Office generally --

Kaplan - Argument

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1 THE COURT: That's fine.

2 MR. KAPLAN: -- so it would normally be placed in
3 original -- with all the original documents and essentially
4 attached to the note.

5 THE COURT: Understood. Okay, what else should I be
6 looking at?

7 MR. LEVITT: Your Honor, if Your Honor does want to
8 focus on the Pooling and Servicing Agreement, there are other
9 provisions in the Pooling and Servicing Agreement that Your
10 Honor might want to look at, specifically -- and if I could
11 just grab my copy --

12 THE COURT: Of course. Is this your copy?

13 MR. LEVITT: Yes, it is. Actually, I have -- I have
14 excerpts -- copies of excerpts, Your Honor, and I'll --
15 actually I'll hand up the original to you so --

16 MR. KAPLAN: I would also argue, Your Honor, in that
17 -- as I said, I believe it's standard operating procedure for
18 servicers, especially when they were the originator of the
19 documents and when they sell them or securitize them and
20 remain the servicer, to execute the documents that are
21 required for transfer, but that there's not a physical
22 transfer. And if you're going to determine --

23 THE COURT: Mr. Kaplan, you're testifying about the
24 ordinary --

25 MR. KAPLAN: My witness I think can testify to that

Colloquy

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1 but I think --

2 THE COURT: Well, you're welcome to have --

3 MR. KAPLAN: -- I think Your Honor can --

4 THE COURT: -- her testify.

5 MR. LEVITT: She has.

6 MR. KAPLAN: -- I think Your Honor's experience can
7 reasonably allow you to take judicial notice that documents
8 don't go from party to party, that they remain with the
9 servicer.

10 MR. LEVITT: I don't -- I don't think the --

11 THE COURT: I'm not going to take judicial notice of
12 that.

13 I noticed that this particular copy is unsigned. Do
14 you know when the Pooling and Servicing Agreement would have
15 been signed?

16 THE WITNESS: We went to get a signed copy the other
17 day and we were told that it is not customary for us to have
18 the signed document so I wasn't able to access the signed
19 document. We have the copy --

20 THE COURT: But --

21 THE WITNESS: -- but we don't have the signed
22 original. I don't have the signed of that. That's the one
23 document I don't have the original -- access to the original
24 of.

25 MR. LEVITT: Your Honor, again, I'm not in any way,

Colloquy

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1 shape or form testifying but I can advise the Court that I
2 spent many hours trying to find this Pooling and Servicing
3 Agreement on the SEC website where they have to be filed and I
4 could not find it, so the only copy of the Pooling and
5 Servicing Agreement that I have is this unsigned copy provided
6 by counsel for the defendant which I have to accept as a valid
7 document.

8 But I can tell Your Honor, the SEC website is where
9 -- where you can find them; I can't find it. I can find a lot
10 of others in a similar name but with different numbers. I
11 can't find this one.

12 THE COURT: Is there reference in this document that
13 I have in my hand to this particular mortgage?

14 THE WITNESS: I don't have it in front of me.

15 THE COURT: There are all kinds of exhibits --

16 THE WITNESS: It's --

17 THE COURT: -- that have numbers but don't have
18 substance.

19 (Pause in proceedings)

20 THE COURT: Have you looked at that, counsel?

21 MR. LEVITT: Excuse me, Your Honor?

22 THE COURT: Have you looked at whether there is
23 reference to this particular mortgage?

24 MR. LEVITT: No, Your Honor. Your Honor, it wasn't
25 again my experience -- because I've been reading a lot of

Colloquy

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1 these lately -- my experience is there's a schedule that's
2 annexed. Very often I'm finding that they don't include the
3 schedule in the filing with SEC I guess for privacy purposes
4 and you're directed to whichever law firm is the firm that
5 filed the documents with the SEC, but I wasn't even provided
6 the schedule as part of this submission.

7 And again, I went onto the SEC website looking for
8 it and couldn't find it. I will also point out to Your Honor
9 that the copy that I was provided and the copy that's in front
10 of Your Honor on the first page references a draft. It says
11 "Sidley" -- I guess Sidley and Austin was the law firm, it was
12 their draft dated 06/27/06. I don't believe, again because
13 this is labeled draft, this may not be the operative document
14 but it is the only document that I was provided by the
15 defendant.

16 MR. KAPLAN: I understand, Your Honor, and I wasn't
17 involved in transmitting the document but I am aware that it
18 does say that.

19 THE COURT: Well, I think you need to get involved
20 and --

21 MR. KAPLAN: I did -- I did ask specifically for a
22 document that was signed and essentially was final.

23 THE COURT: Essentially?

24 MR. KAPLAN: Well, it was a final document --
25 signed, final document, not as alleged, a draft.

Colloquy

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1 THE COURT: And you didn't get it?

2 MR. KAPLAN: And I have not, no.

3 THE COURT: So we don't know what this is, nor do we
4 know whether it applies to this particular situation. The
5 only clue we have is that it's between Countrywide and the
6 Bank of New York trustee and that it relates to Asset-Backed
7 Certificate Series 2006/8 --

8 MR. KAPLAN: Right.

9 THE COURT: -- which suggests that it might be the
10 same pool, but we don't know whether it was executed. We have
11 questions raised because it's not on the SEC website and we
12 don't have a specific listing of this particular mortgage, and
13 I take it that additional time will not help you?

14 MR. KAPLAN: Well, I don't have physical access. It
15 would be up to Countrywide or Bank of America --

16 THE COURT: Well, you as counsel for Countrywide --

17 MR. KAPLAN: Well, Your Honor, I would certainly
18 request additional time to allow Countrywide, the defendant,
19 to procure the documents, provide them to counsel and Your
20 Honor, as well as for us to synopsize the information
21 contained in there pertaining to possession and retention of
22 documents.

23 THE COURT: Well, you know, this is a serious
24 consequence -- this meaning the relief sought by the
25 plaintiff. If there are substantial gaps in my ability to

Colloquy

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1 follow the stream, then the plaintiff will be successful. I
2 would offer that opportunity to Countrywide.

3 If they can't come up with a signed legitimate
4 verified copy of it -- and it can be in the first instance the
5 final executed document with some tie-in to this mortgage --
6 somebody has an exhibit that would, you know, list this
7 mortgage theoretically -- and if they don't, that's a problem
8 -- with a certification from a qualified Countrywide
9 representative that this is what it purports to be.

10 If there are further questions, we can take further
11 testimony, either in Court or by telephone conference call. I
12 hate to make you come back from California, although -- and
13 it's not very nice this time of year in New Jersey, I will
14 grant you that, but we can, you know, try to keep going in
15 terms of getting it.

16 There is a limit and there is a burden, I fully
17 agree with you, counsel. I'm pushing the envelope to see
18 where we get to in terms of lining these things up or not.
19 That's what I'm aiming for because I frankly don't want to
20 grant relief if there is something for instance in these
21 documents and if the final draft has been executed and so
22 forth that should guide resolution of this decision. It has
23 major implications potentially. I mean, you know, my written
24 decision may be ignored but it may be a basis for other such
25 relief and I'd like to get it right if I can so --

Colloquy

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1 MR. KAPLAN: I share that thought, Your Honor. I
2 was going to mention, it does have significant ramifications
3 because of what -- you know, the document and the physical
4 retention of documents or physical transfer of the documents
5 might mean to other -- you know, loans.

6 THE COURT: Then I urge Countrywide to take it
7 seriously and to direct their attention to -- meaning if there
8 are things that they want under seal for any reason, that's
9 certainly something that we would accommodate in the first
10 instance subject to objection so there is opportunity to work
11 with them on this, but they've got to come to the table, and I
12 think that's demonstrated by this hearing.

13 So if -- if there can be a -- if you're right,
14 counsel, number one that possession is required but if that
15 possession is demonstrated by agency, one might disagree about
16 whether possession can be demonstrated by agency. Perhaps
17 that's another question that is posed, even if the documents
18 do support that. But let's assume that Countrywide gets over
19 that hurdle. What else would we look at -- should be look at?

20 MR. LEVITT: Again, Your Honor, the lack of
21 endorsement, the fact that there's no allonge affixed so --

22 THE COURT: Well, affixing of the allonge we've sort
23 of -- we're done with. We're -- this is not going to be a
24 holder in due course but I'm not sure that it matters. You're
25 right that there is no affixing, there's no proof that this

Colloquy

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1 was affixed in the way that the Third Circuit imagined was
2 necessary -- not imagined but proclaimed was necessary.

3 Your assertion would be that the allonge that was
4 executed two weeks ago should not be considered as an
5 appropriate transfer because it was post-petition, it was in
6 the litigation, it wasn't effective as of the date of the
7 proof of claim or better yet, as of the date of the filing of
8 the petition and that therefore, it is invalid.

9 MR. LEVITT: Correct, Your Honor.

10 THE COURT: And that is a very legitimate and
11 important issue and I would appreciate Mr. Kaplan dealing with
12 that.

13 MR. LEVITT: And so getting to the other portion,
14 Your Honor, the only -- and it has nothing to do with holder
15 in due course, we're not raising the fraud issue, we're not
16 raising those issues. The issue is does this creditor have
17 the right to enforce the note. So with regard to the allonge,
18 luckily I have a Third Circuit decision that makes it easy.
19 With regard to the other, there's only one other way to
20 enforce and that's to take the rights of the transferee --
21 transferor under the Third Circuit decision and under 3-203.

22 And again there, Your Honor, if my position is the
23 trust has to be in possession of the note and the trust has to
24 prove that it took possession and if we're going to deal with
25 the Pooling and Servicing Agreement -- and, Your Honor, one of

Colloquy

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1 the reasons why I wasn't moving it into evidence was because
2 to me it wasn't competent evidence at this point, again, it
3 wasn't my burden, but if counsel is going to find the
4 legitimate document that's recorded with the SEC, well that's
5 going to be the Bible, Your Honor, and that's going to say
6 that this note had to be delivered.

7 Whether it ultimately ended up with the trust --
8 with the servicer, the Pooling and Servicing Agreement, if
9 it's at all close to this draft or like every other Pooling
10 and Servicing Agreement I've read, it's going to say it would
11 have had to be physically transferred first from Countrywide
12 was the originator to the depositor, and then from the
13 depositor ultimately to the trust.

14 The physical documents according to the Pooling and
15 Servicing have to be transferred and in this document you're
16 going to see it had to be endorsed. We're not going to have
17 that here. So if they can prove that these documents were
18 physically transferred, meaning there's delivery receipts
19 showing they were physically transferred from A to B, from B
20 to C, and if C decided to let its agent hold them, I think,
21 Your Honor --

22 THE COURT: Well, there's no question on this record
23 and, you know, I'm ready to accept it as fact that these
24 original documents never moved. I mean, that was the
25 testimony.

Colloquy

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1 MR. LEVITT: And if that's the case, Your Honor, I
2 think we're done because unless the documents were physically
3 transferred, the trust ultimately could decide to let its
4 agent -- you know, Countrywide here, despite the witness's
5 beliefs and assertions, Countrywide here is wearing two
6 different hats, it's wearing the hat as Countrywide Home
7 Mortgage, the one that originated these mortgages, packaged
8 them and got rid of them as quickly as they possibly could,
9 that's hat number one, and then as another way to make money,
10 they're a servicer.

11 THE COURT: Right.

12 MR. LEVITT: So it's two different -- from all
13 practical purposes and in fact I think the Pooling and
14 Servicing Agreement will show, it's two separate and distinct
15 legal entities, both Countrywide entities, now Bank of America
16 entities. So if A, which is Countrywide the originator, ended
17 up securitizing and selling this loan they would have had to
18 have followed the terms of the Pooling and Servicing Agreement
19 to get it into the hands of the trust and then D, which is
20 Countrywide the servicer, could have gotten possession. And
21 even if it meant -- even if they stayed in the same vault but
22 if it meant that there was a delivery receipt from A to D or A
23 to B to C to D, that's what they have to prove.

24 And because they're saying that, now maybe they do
25 have those delivery receipts and if they want to produce them,

Colloquy

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1 that's great, but if that document never moved from that safe,
2 first of all they're in violation of their Pooling and
3 Servicing Agreement, they're in violation of the UCC -- we're
4 done.

5 THE COURT: If they're in violation of the UCC, I'm
6 agreeing with you. If they're in violation of the Pooling and
7 Servicing Agreement, I wonder how a debtor can avail
8 themselves of enforcement of the pooling and servicing --

9 MR. LEVITT: Third-party beneficiary.

10 THE COURT: I'm sorry?

11 MR. LEVITT: They're the third-party beneficiary of
12 this contract.

13 THE COURT: Beneficiary in terms of where the
14 documents are -- that's a tough one.

15 MR. LEVITT: In terms of -- and sometimes it's
16 third-party detriment too because we have all these problems
17 of the way these servicers act, but the reality is, Your
18 Honor --

19 THE COURT: It's a whole other story.

20 MR. LEVITT: -- we're referenced, again, they're
21 going to produce the document, we're going to be referenced as
22 one of the loans that are subject to this Pooling and
23 Servicing Agreement.

24 THE COURT: Yes, but the moving around of the
25 documents are not for the benefit of the third-party

Colloquy

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1 beneficiary. You can make the argument that they are because
2 they act upon the UCC protections of knowing who's holding
3 what. That's not an unreasonable argument and I'm thinking it
4 out as we go, but here's what I need, counsel. Because your
5 submission didn't focus, I would -- because you didn't have
6 the --

7 MR. LEVITT: I --

8 THE COURT: -- the factual basis --

9 MR. LEVITT: Correct.

10 THE COURT: -- now you do, I would appreciate your
11 honing in on your arguments. They are to -- we've eliminated
12 the affixing as we've said, but I'm interested in the
13 possession element. At the same time that I allow the
14 defendant to amplify upon their argument by future submission,
15 not only of a document that is a final version if you have it
16 and can get it and can certify that that's what it is and a
17 focus on what provisions in that document I should -- on both
18 sides pay attention to -- obviously, when you get it you
19 provide it to counsel as well, in addition to any argument
20 that you would focus me on.

21 So it's half-baked. We've made some progress.
22 We've understood certain factual predicates that the documents
23 remained where they were, that the allonge was created two
24 weeks ago and those are important facts to fit into the
25 equation.

DeMartini - By the Court

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1 Did you have a comment, sir?

2 MR. KAPLAN: Yeah, I'm just -- I'm just a little --
3 and believe me, I understand where Your Honor is heading. I'm
4 not -- I know I'm not going to change Your Honor's mind, but
5 I'm a little troubled by the fact that we're accepting a
6 representation here. And this witness is in the Litigation
7 Department, this witness is not the person that was
8 responsible for the Pooling and Servicing Agreement or how
9 these documents are dealt with.

10 I think at the very least, even if we don't have
11 live testimony, we need to have something from someone who can
12 say they're custodian of records that truly tracks this.
13 We're accepting a representation --

14 THE COURT: Which representation?

15 MR. KAPLAN: The representation that they stayed in
16 the same vault and they never moved. We don't know that, Your
17 Honor. We're -- this is --

18 THE COURT: But let's examine --

19 MR. KAPLAN: -- and a lot of that is counsel's
20 representation.

21 THE COURT: -- Ms. DeMartini in terms of her
22 knowledge of that fact.

23 EXAMINATION

24 BY THE COURT:

25 Q You've testified that these documents, the originals, the

DeMartini - By the Court

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1 files --

2 A Have remained with Countrywide.

3 Q -- stayed with -- now, are there two different entities?

4 This note was entered into with Countrywide Home Loans, Inc.

5 A Yes.

6 Q Is that the same as Countrywide Home Loan Servicing, LP?

7 A Countrywide Home Loan Servicing, LP is the -- is our

8 service -- is the portion of the business that does the

9 servicing of the loan so they are slightly different in that

10 they were both part of the -- what was formerly Countrywide

11 Financial Corporation. Countrywide Servicing Home Loans, LP

12 was the servicing portion of that business. They would -- and

13 Countrywide Home Loans would have been the ones that

14 originated the loan.

15 Q Well, let's talk first about your experience with the

16 company. You said that you started about ten years ago?

17 A Yes.

18 Q And with which company, the servicer or the --

19 A I've always been involved with servicing.

20 Q In the servicing.

21 A Yes.

22 Q And what were your positions with servicing?

23 A Oh, I've had a lot of positions with servicing. I've been

24 a customer service representative, I've been a supervisor,

25 I've been a trainer, I've been a training developer, I've

DeMartini - By the Court

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1 managed our Policies and Procedures writers, I've been a
2 Communications leader, I've been a senior team leader, I've
3 been a team leader auditor, a team leader trainer -- I've done
4 all kinds of things all within the customer contact area of
5 servicing.

6 And as being part of customer contact we had to --
7 we were involved in every aspect of the servicing. We were
8 the ones that did all of the speaking to the borrowers about
9 anything to do with their loans so I had to know about
10 everything in order to be able to do that and in order to be
11 able to train the customer service representatives.

12 In order to do that, as I stated before, I went over
13 to the -- we were called the Case Management Department; now
14 we're called the Litigation Management Department. We are
15 part of servicing as well under -- under -- in the loan admin
16 servicing, what used to be loan admin servicing as a
17 supervisor last September.

18 Q What contact, if any, during your experience with
19 Countrywide Servicing have you had with the loan originator
20 aspect of the company?

21 A I've never been involved specifically with the
22 originations of the -- of the loans. As a servicer, we get
23 involved after the loan is established and we're the ones that
24 then deal with everything after the fact.

25 Q What do you -- are you aware of the procedures that occur

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1 internally as between the originator and the servicer as soon
2 as the loan is given?

3 A Well, after the loan's originated, then it's going to what
4 we would have called boarded our system. I would be familiar
5 with it from the time that it boarded on --

6 Q What does that mean?

7 A Boarded is when it would get put into the computer system.
8 That would be when the documents are all imaged and then
9 stored. That all happens when the loan comes on board or
10 becomes a part of our servicing. What happens to it prior to
11 that as far as the origination process inasmuch as the
12 underwriting or any of that, that I'm not as familiar with,
13 no.

14 Q When the file is -- when the loan is boarded, who does
15 that?

16 A Let me find the best way to describe that. Well, the
17 documents themselves, we have a Documents Department that
18 would be in charge of imaging and then they would be the ones
19 that would be storing the original documents. We have a
20 system --

21 Q Is that within your servicing company?

22 A That would be under our servicing company, yes.

23 Q Have you ever dealt in that department -- the Documents
24 Department?

25 A I have not physically worked in that department. I've

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1 been in that building, I -- but for me to specifically be the
2 one doing that, no, I haven't.

3 Q Have you had occasion to go there to look for a document
4 let's say or --

5 A I've had occasion to speak to people -- the documents --
6 some of them are stored -- they're stored there and then we
7 also have other storage facilities. These particular
8 documents are in our building because I looked these ones up,
9 but --

10 Q What do you mean, you've looked these up -- these ones up?

11 A Well, when we went to order the originations file we
12 looked -- looked for the -- the documents. The documents had
13 been previously requested by our Foreclosure Department and so
14 that's where they're located right now. The physical
15 documents are in the Foreclosure Department.

16 Q The original physical documents?

17 A Yeah.

18 Q So is it your custom to request original documents --

19 A The --

20 Q -- from this department when the Litigation Department
21 needs them?

22 A If they're requested by counsel, if they're requested for
23 various things with whether it's within a foreclosure or a
24 bankruptcy. But if there's something that comes up where
25 we're being asked to prove something, then it's becoming more

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1 customary lately.

2 It never used to be to where the originals were ever
3 requested but lately more and more of the time of day of
4 things around the country, we are being asked to physically
5 produce the originals more frequently.

6 Q And you would direct those inquiries to the Document
7 Department?

8 A Yes, Document Request. It's our DMS system, it's our
9 Document Request.

10 Q And so to your knowledge, the original documents, the
11 origination documents, the notes and the mortgages are
12 maintained in that facility?

13 A Yes.

14 Q To your knowledge, are they ever moved except for
15 inquiries from counsel? Are they ever moved to follow the
16 transfer of ownership?

17 A I can't say that they're never moved because, I mean, with
18 this many millions of loans as we have I wouldn't presume to
19 say that, but it is not customary for them to move.

20 Q Do you have personal knowledge of under what circumstances
21 they would move or whether and to what extent they're ever
22 moved?

23 A Not -- not specifically to what I would be comfortable
24 testifying to, no.

25 Q Okay. In terms of this particular transaction, from your

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1 experience of requesting these original documents, were you
2 able to establish that these were not moved?

3 A We were able to establish that they're in our -- what we
4 call the 400 Building which is the building that we're --
5 where we're at and we were able to establish that that's where
6 they're located and that's -- we were still in the process of
7 trying to physically get them to bring them here today but it
8 just -- I wasn't able to obtain them in time.

9 Q And your information is that they may be at the
10 Foreclosure Department, but are you certain that they weren't
11 moved out of the servicing company?

12 A We had Federal Express tracking. Even when we move
13 something internally like that a lot of times it will go Fed
14 Ex so that we have that tracking so that's how I know that
15 they went there because I have the tracking number --

16 Q I see.

17 A -- so that's how I know that they're there, and I don't
18 have any receipt or any tracking that they've ever moved
19 beyond that.

20 Q Understood.

21 THE COURT: Did I generate additional questions?

22 MR. KAPLAN: No, Your Honor.

23 MR. LEVITT: No, Your Honor.

24 THE COURT: All right. Are there any other
25 questions for Ms. DeMartini?

1 MR. LEVITT: No, Your Honor.

2 THE COURT: Thank you, Ms. DeMartini. You may step
3 down.

4 (Witness excused)

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C E R T I F I C A T I O N

I, Diane Gallagher, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

/s/Diane Gallagher November 22, 2010

DIANE GALLAGHER

DIANA DOMAN TRANSCRIBING